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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ZHANG ZIYI, an individual,

Plaintiff,

v.

CHINA FREE PRESS, INC., a North
Carolina non-profit corporation doing
business as BOXUN NEWS; WEICAN
NULL MENG, an individual also known
as WATSON MENG and also known as
WEICAN “WATSON” MENG; DOES 1-
25, inclusive,

Defendants.

CASE NO.: 2:12-cv-05216-JGB (PLA)

**JOINT REPORT OF FED. R. CIV.
P. RULE 26(f) CONFERENCE**

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Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, Local Rule 26-1, and the Court's Scheduling Conference Order dated August 21, 2013, plaintiff Zhang Ziyi ("Plaintiff") and defendants China Free Press, Inc. ("China Free Press") and Weican Null Meng (China Free Press and Weican Null Meng shall be referred to collectively as "Defendants"), by and through their counsel of record, conducted the conference of counsel required by Rule 26(f), and hereby submit the following Joint Report.

1. Statements Of The Case

A. Plaintiff's Short Synopsis of the Principal Issues In The Case

This action is necessary to restore the reputation and vindicate the rights of Plaintiff Zhang Ziyi, an international motion picture actress. Boxun News has repeatedly published reports that she is a prostitute who has earned over \$100 million by having sexual relations with Chinese government officials and others, and it now accuses her of being a "proxy" for the Chinese government. The Boxun reports were republished by other media outlets around the world. Boxun News has since refused to print a retraction and has instead stated publicly that the reports are "believed to be true." But none of the underlying reports are true, and Boxun News never had any legitimate basis to publish them. It never contacted Ms. Zhang before it published the reports to confirm any of the alleged "facts" or obtain a comment from her. Boxun News has never even publicly revealed the source of any of the defamatory statements about Ms. Zhang. Instead, all of the reports were published anonymously and attributed only to unnamed sources. According to the Boxun News website, its mission is to "become the #1 most trusted Chinese online news service by insisting on 'Independence' and 'Journalistic Objectivity.'" Boxun News has apparently abandoned this mission in its quest for salacious headlines at the expense of Ms. Zhang. She now seeks, *inter alia*, general and special damages for the injuries caused to her reputation and business interests.

B. Defendants' Short Synopsis Of The Principal Issues In The Case

Defendants maintain that the challenged publications are protected by the First Amendment of the United States Constitution and by applicable statutory privileges, and that Mr. Meng had an adequate basis to publish them about Plaintiff, a public figure, under both relevant law and applicable, standardized journalistic practices. Mr. Meng further maintains that this case represents not a celebrity seeking genuine redress for a wrong, but an effort by the Chinese government (albeit by proxy) to attack and retaliate against an independent journalistic critic of its brutal and repressive practices, and to use the American judicial system as an instrument to identify dissidents for persecution. The lawsuit places Mr. Meng in a grave quandary: if he reveals the sources for his stories, he exposes them to arrest and imprisonment without due process in China, and even torture. Thus, Plaintiff has placed Meng in a position of defending his constitutional rights to free speech, such as his statements about Plaintiff, or revealing his heretofore anonymous sources and subjecting them to harsh punishments at the hands of the government they seek to rightly criticize.

In addition, China Free Press is not an appropriate party to this lawsuit. China Free Press, founded by Mr. Meng in 2004, is a non-profit organization devoted to promoting free speech and democracy in China by supporting writers and reporters in China. Since its inception, China Free Press has provided free web hosting to over a dozen well-known websites for Chinese dissidents, which have broken news stories about some of the most prominent newsworthy incidents in China, including the SARS scandal, the avian flu outbreak, and the corruption scandal involving Bo Xilai. For instance, Boxun has been a major source of uncensored news in China since 2000, regularly covering instances of human rights violations. However, China Free Press has nothing to do with the content that appears on the sites that it hosts, including the articles at issue in this lawsuit. Yeeka, LLC (the company which publishes Boxun) and China Free Press are

completely separate and have different accounts, books, offices, personnel (other than Mr. Meng), operations and purposes; neither entity controls or manages the other or serves as a “shell” or instrumentality of the other. The Communications Decency Act § 230 immunizes China Free Press from liability for Boxun’s content.

2. Subject Matter Jurisdiction

Subject matter jurisdiction in this case is undisputed and is based on diversity of citizenship. Plaintiff is a citizen of China. Mr. Meng is a citizen of the State of North Carolina. China Free Press, Inc. is a North Carolina non-profit corporation.

3. Legal Issues

Following is a listing of some of the key legal issues in this action:

A. Whether Defendants can be held liable for allegedly defamatory statements published regarding Plaintiff

B. Whether the statements made about Plaintiff by Defendants are protected by the First Amendment and applicable statutory privileges

C. Whether, if Plaintiff can demonstrate that the statements at issue are false, she can establish that Defendants acted with the requisite mental state to trigger liability

D. Whether Defendants can be compelled to identify the sources upon which the statements made about Plaintiff were based

4. Parties, Evidence, Etc.

Following is a listing of some of the parties, witnesses and key documents on the main issues in this case:

Parties --

A. Zhang Ziyi

B. Weican Null Meng

C. Representatives of China Free Press, Inc.

Third Party Witnesses –

A. Sources relied upon by Boxun News as the basis for its publications regarding Zhang Ziyi

B. Ling Lucas

C. Representatives of Citroen France

D. Representatives of Michael Kors

E. Representatives of William Morris Endeavor Entertainment

Documents --

A. The Boxun publications regarding Plaintiff

B. Email messages regarding cancellation of job opportunities caused by publication of defamatory statements

5. Damages

Plaintiff alleges that she has suffered approximately \$250,000 in special damages in addition to general damages for injury to her reputation. She also seeks punitive damages.

6. Insurance

There is no insurance coverage for any of the claims asserted against Defendants by Plaintiff.

7. Law And Motion Matters

In addition to the motions previously filed by defendant Weican Null Meng (Rule 12(b)(2) Motion to Dismiss, Special Motion to Strike under California Civil Procedure Code § 415.16, and Motion for Bond under California Civil Procedure Code § 1030), the Parties believe that the following motions will be filed, pursuant to the schedules proposed above:

A. Plaintiff's Motions

In addition to any necessary discovery motions, Plaintiff may move for summary judgment. Plaintiff reserves her rights to argue by motion any other issue that arises and which cannot be resolved of through a conference of counsel

1 as provided for under Local Rule 7-3.

2 Finally, Plaintiff contends that this Court should defer any ruling on Meng's
3 pending Special Motion to Strike Under California Civil Procedure Code § 415.16
4 at this time. On April 17, 2013, the Ninth Circuit entered an order in the action
5 entitled *Tarla Makaeff v. Trump University, LLC*, Ninth Circuit Case No. 11-
6 55016, reversing an order denying a California anti-SLAPP motion filed by the
7 defendant/counter-complainant. But in separate concurring opinions, Judge
8 Kozinski and Judge Paez characterized the California anti-SLAPP motion is
9 "quintessentially procedural", and they called for the Ninth Circuit to consider *en*
10 *banc* whether federal courts should hear anti-SLAPP motions under *Erie Railroad*
11 *Co. v. Tompkins*. In response, on April 30, 2013, the counter-claimant in the
12 *Makaeff* action filed a Petition for Rehearing *En Banc*, and that Petition is still
13 pending before the Ninth Circuit. This Court should defer any ruling on Meng's
14 pending Special Motion to Strike Under California Civil Procedure Code § 415.16
15 until the Ninth Circuit has had an opportunity to address this threshold issue.

16 **B. Defendants' Motions**

17 In addition to any necessary discovery motions, Defendants may move for
18 summary judgment. Defendants specifically contemplate making motions for
19 protective orders with respect to the identities of the Defendants' anonymous
20 sources, and responding to Plaintiff's motion or motions to compel, as specified
21 above. Defendants reserve their rights to argue by motion any other issue that
22 arises and which cannot be resolved of through a conference of counsel as
23 provided for under Local Rule 7-3.

24 **8. Manual for Complex Litigation**

25 At this time, the Parties do not believe that the procedures set forth in the
26 Manual for Complex Litigation should be utilized in this action at this time.
27 However, some special steps may be required to address discovery of foreign
28 witnesses.

1 **9. Status of Discovery**

2 To date, the parties have completed limited discovery in connection with the
3 pending motions filed by Defendant Weican Null Meng. This discovery includes
4 depositions of Weican Null Meng and expert witnesses Mary Hausch and David
5 Ardia. It also includes the production of documents by Weican Null Meng, Mary
6 Hausch and David Ardia. The Parties have also made all necessary initial
7 disclosures in accordance with Rule 26.

8 **10. Discovery Plan**

9 **A. Initial Disclosures**

10 Plaintiff and Defendants (jointly, the “Parties”) have previously made all
11 initial disclosures.

12 **B. Preservation of Documents**

13 The Parties have agreed to preserve all discoverable information, including,
14 without limitation, all documents, electronically stored information, and tangible
15 things, in any way related to the allegations in Plaintiff’s Complaint.

16 **C. Proposed Discovery Plan**

17 **1. Plaintiff’s Proposed Discovery Plan**

18 Plaintiff’s Complaint against Defendants asserts claims for (i) libel *per se*,
19 (ii) false light invasion of privacy, (iii) intentional interference with prospective
20 economic advantage, (iv) negligent interference with prospective economic
21 advantage, and (v) unlawful business practices under Cal. Bus. & Prof. Code §
22 17200. Plaintiff’s claims arise out of Defendants’ repeated publication of
23 defamatory reports that Plaintiff is a prostitute who earned in excess \$100 million
24 by having sexual relationships with Chinese government officials and others,
25 which reports have been republished by other media outlets around the world.

26 Plaintiff believes that several categories of discovery are necessary in
27 connection with her claims. Those categories of discovery include, but are not
28 limited to: (i) information related to the identity of Defendants’ source(s); (ii)

1 information related to the relationship between and among the Defendants, and the
2 relationship between Defendants, on the one hand, and www.boxun.com, on the
3 other hand; and (iii) information related to personal jurisdiction.

4 **Discovery re: Identification of Defendants' Source(s)**

5 Plaintiff believes that discovery related to the source(s) Defendants relied on
6 when they published these false reports is critical to her case. With respect to this
7 category of discovery, Plaintiff anticipates seeking discovery regarding, but not
8 limited to, the following subjects: the identity of Defendants' sources; contact
9 information for Defendants' sources; any efforts by Defendants to verify the
10 information provided by their sources related to the reports they published about
11 Plaintiff; and any efforts by Defendants to verify any other information previously
12 provided by the sources who provided information related to the reports they
13 published about Plaintiff. Although much of this information should be provided
14 through Initial Disclosures under Fed. R. Civ. P. 26, Defendants have withheld
15 information pertaining to the sources supposedly relied upon for purposes of the
16 publications about Plaintiff. Plaintiff has offered to enter into an appropriate
17 protective order in an effort to assuage Defendants' concerns about confidentiality,
18 but Defendants continue to refuse to disclose the identity of these important
19 witnesses. As a result, Plaintiff believes that discovery on this issue likely will
20 require interrogatories, requests for production, requests for admission,
21 depositions, and ultimately may require motion practice. Nonetheless, Plaintiff
22 will meet and confer with Defendants pursuant to Local Rule 37-1 in an effort to
23 resolve any issues that arise in connection with this category of discovery.

24 **Alter Ego Discovery re: The Relationship Between Defendants, And**
25 **Between Defendants And www.boxun.com**

26 In addition, Plaintiff believes that *alter ego* discovery concerning the
27 relationship between Defendants, on the one hand, and Boxun News, on the other
28 hand, will be necessary. With respect to this category of discovery, Plaintiff

1 anticipates seeking discovery regarding, but not limited to, the following subjects:
2 the relationships between China Free Press and Boxun News; the relationship
3 between China Free Press and Weican Null Meng; the relationship between
4 Weican Null Meng and Boxun News; the management structure of China Free
5 Press; the management structure of Boxun News; the relationship between
6 www.boxun.com and www.boxun.us; the relationships between Weican Null
7 Meng and www.boxun.us; and the relationship between Weican Null Meng and
8 www.chinafreepress.com. Plaintiff believes that discovery on these issues will
9 require interrogatories, requests for production, requests for admission,
10 depositions, and ultimately may require motion practice. Nonetheless, Plaintiff
11 will meet and confer with Defendants pursuant to Local Rule 37-1 in an effort to
12 resolve any issues that arise in connection with this category of discovery.

13 **2. Defendants' Proposed Discovery Plan**

14 As a preliminary matter, Defendants maintain that initial discovery, and any
15 further discovery that may occur before a hearing on Defendants' pending motions,
16 should be narrowed to that permitted by the Court to respond to Mr. Meng's
17 motion to dismiss for lack of jurisdiction and Defendants' anti-SLAPP motions.

18 If Mr. Meng's motions are not successful, Defendants anticipate seeking
19 discovery from Plaintiff including a deposition of her and possibly of third parties,
20 requests for production of documents (including direct or indirect communications
21 with the Chinese government officials mentioned in the articles), interrogatories,
22 and requests for admission relating to damages and to Plaintiff's relationship with
23 the Chinese government officials named in the articles.

24 Defendants anticipate that the protection of Defendants' sources will be a
25 major issue in the case. Though Defendants have met and conferred with
26 Plaintiff's counsel, and will continue to do so and negotiate in good faith in an
27 attempt to resolve these issues, Defendants anticipate that motion practice – either
28 a motion to compel or a motion for a protective order – may be necessary.

Defendants believe that revealing their anonymous sources could expose those unnamed sources and their families and associates to real and palpable danger, including but not limited to arrest and imprisonment without due process, and physical abuse without any pretense of due process. Though this Court can control what happens to witnesses in the United States, it cannot control what happens to them in China. Defendants anticipate litigation over whether they should, or can, be compelled to reveal their sources. However, Defendants anticipate such litigation only after their pending motions are decided.

3. Discovery of Electronically Stored Information and Form of Production

The parties have agreed to produce electronic documents in PDF format for electronic review. Specifically, the parties agree to exchange the following:

- PDF files created from the native files (endorsed with bates numbers and the appropriate confidentiality legend, if any)
- Document text (OCR or extracted from native files to the extent available), in separate TXT file, with file name corresponding to the file name of the TIFF image
- The following extracted metadata from the native files:
 - Visible email headers;
 - File system metadata to the extent available;
 - Application metadata to the extent available; and

Plaintiff's counsel has indicated that they use Relativity; however Meng's counsel does not use Relativity. In the interest of expediency and convenience for both sides, the parties have agreed not to produce load files.

4. Changes in the Limitations on Discovery and Other Matters

a. Electronic Service Agreement

The parties have agreed to electronic service of all documents not filed with the Court in accordance with Fed. R. Civ. P. 5(b)(2)(E), and that three days will be

1 added to the deadline to respond in accordance with Fed. R. Civ. P. 6(d).

2 **b. Document Translation**

3 Plaintiff and Mr. Meng discussed cost-sharing for the translation of
4 documents written in Mandarin/Cantonese (or other foreign languages) by an
5 independent third party translation service provider.

6 While the requesting party ordinarily bears the cost of translating documents
7 produced in response to a request, the producing party will want to ensure that the
8 documents do not contain privileged and proprietary information before producing
9 them, and thus also carries the burden of paying for the translations to accomplish
10 this. Accordingly, instead of the parties respectively paying for two separate,
11 duplicative translations, Plaintiff and Mr. Meng have tentatively agreed to share
12 the cost of one translation to be performed by an independent third party translator
13 that they mutually agree upon using, the rates for which shall be pre-approved by
14 both parties, thereby also eliminating disputes regarding the accuracy of the
15 translations. The parties will revisit this cost-sharing if China Free Press remains
16 in the case after initial motions.

17 **11. Discovery Cut-Off**

18 The Parties propose June 30, 2014 as the final day for completion of
19 discovery, including resolution of all discovery motions.

20 **12. Expert Discovery**

21 The Parties propose March 31, 2014 as the deadline for initial expert witness
22 disclosures and May 2, 2014 as the deadline for rebuttal expert witness disclosures.
23 Expert discovery June 30, 2014 as the final day for completion of discovery,
24 including resolution of all discovery motions.

25 **13. Dispositive Motions**

26 **A. Plaintiff**

27 Plaintiff believes that the issue of liability may be determined by motion
28 practice.

B. Defendants

Defendants believe that the issues of jurisdiction over this case by the Court, liability, and applicable First Amendment defenses and privileges can be determined by motions. Some of these motions are pending; if they are not successful, these defenses may be supported in dispositive motions filed by the Defendants after further discovery. In addition, Defendants may seek bifurcation of liability and damages at the time of trial.

14. Settlement/Alternative Dispute Resolution (ADR)

The parties have engaged in limited settlement discussions, but to date they have not been able to reach a negotiated resolution of this matter. The parties have agreed to submit the action to mediation and are in the process of scheduling a mediation proceeding before Magistrate Judge Margaret Nagle.

15. Trial Estimate

The Parties anticipate a 2 week long jury trial. Plaintiff anticipates calling approximately 8 witnesses. Defendants anticipate calling approximately 6 witnesses.

16. Trial Counsel

Patricia Glaser and Adam LeBerthon will try the case for Plaintiff. Marc Randazza will try the case for Weican Null Meng. James Rosenfeld will try the case for China Free Press, Inc. Any additions or substitutions of counsel shall be recorded with the Court.

17. Independent Expert or Master

The Parties do not believe that the appointment of a master or independent scientific expert will be necessary in this case.

18. Other Issues

It may be necessary to conduct discovery in China or other foreign countries. As a result, discovery could take significantly longer than in cases in which all discovery can be conducted domestically.

1 Depending on the results of discovery related to Defendants' sources,
 2 Plaintiff might add those sources as parties to this dispute. In addition, depending
 3 on the results of discovery related to the relationships between Defendants, on the
 4 one hand, and www.boxun.com, on the other hand, Plaintiff might add additional
 5 corporate parties including, without limitation, an entity known as Yeeka, LLC.

6 **19. Amendment Of Pleadings**

7 Depending on the outcome of discovery related to the issues of (i) *alter ego*
 8 and (ii) Defendants' sources, Plaintiff may seek leave to amend its pleadings to add
 9 additional parties as defendants. Defendants reserve the right to update and amend
 10 their respective answers and affirmative defenses as appropriate.

11
 12 DATED: September 9, 2013

GLASER WEIL FINK JACOBS
 HOWARD AVCHEN & SHAPIRO LLP

14 LAW OFFICE OF ADAM LEBERTHON

16 By: /s/ Adam LeBerthon
 Attorneys for Plaintiff Zhang Ziyi

18
 19 DATED: September 9, 2013

DAVIS WRIGHT TREMAINE

20 By: /s/ James Rosenfield
 JAMES ROSENFELD
 Attorneys for Defendant China Free Press,
 Inc.

22
 23 DATED: September 9, 2013

RANDAZZA LEGAL GROUP

25 By: /s/ Marc J. Randazza
 MARC J. RANDAZZA
 Attorneys for Defendant Weican Null
 Meng

SCHEDULE OF PRETRIAL AND TRIAL DATES WORKSHEET

<u>Case No.</u>	2:12-cv-05216-JGB (PLA)		
<u>Case Name</u>	Zhang Ziyi v. China Free Press, Inc., et al.		
	<u>Plaintiff(s)</u>	<u>Defendant(s)</u>	
	<u>Request</u>	<u>Request</u>	
<u>Matter</u>	<u>mo/day/year</u>	<u>mo/day/year</u>	<u>Court's Order</u>
X Jury Trial or <input type="checkbox"/> <u>Court Trial</u> (Tuesday at 9:00 a.m.) Length 14 Days	10/6/14	10/6/14	
<u>Final Pretrial</u> <u>Conference [L.R. 16]</u> <u>and Hearing on</u> <u>Motions <i>In Limine</i></u> <u>(Monday - two (2)</u> <u>weeks before trial</u> <u>date)</u>	9/22/14	9/22/14	
<u>Last Date to Conduct</u> <u>Settlement</u> <u>Conference</u>	9/1/14	9/1/14	
<u>Last Date to Hear</u> <u>Non-discovery</u> <u>Motions (Monday at</u> <u>9:00a.m.)</u>	8/4/14	8/4/14	

<u>All Discovery Cut- Off (including hearing all discovery motions)</u>	6/30/14	6/30/14	
<u>Expert Disclosure (Rebuttal)</u>	5/2/14	5/2/14	
<u>Expert Disclosure (Initial)</u>	3/31/14	3/31/14	
<u>Last Date to Amend Pleadings or Add Parties</u>	2/3/14	2/3/14	

ADR [L.R. 16-15] Settlement Choice:

- ☐ Attorney Settlement Officer Panel
- ☐ Private Mediation
- ☒ Magistrate Judge